

Fernandes Super Markets, Inc. and Teamsters Local Union No. 653, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 1-RC-9754

May 15, 1968

DECISION ON REVIEW AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On December 6, 1967, the Acting Regional Director for Region 1 issued a Decision and Direction of Election in the above-entitled proceeding, in which he directed an election to sever a unit of warehousemen, truck mechanics, and truckdrivers employed at the Employer's Norton, Massachusetts, warehouse and garage locations from an overall unit of the Employer's employees. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, as amended, the Employer filed a timely request for review, primarily contending that the requested unit is inappropriate for severance and that the Acting Regional Director failed to give proper weight and recognition to the bargaining history between the Employer and the Intervenor.¹ The Petitioner filed a brief in opposition to the request for review. By telegraphic Order dated January 15, 1968, the National Labor Relations Board granted the request for review and stayed the election. Thereafter, the Petitioner filed a brief and the Employer filed a statement reiterating the position set forth in its request for review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the entire record in this case with respect to the Acting Regional Director's determination under review, including the Petitioner's brief, and finds as follows:

The Petitioner contends that, since the warehousemen, truckdrivers, and mechanics are separately located away from the Employer's retail stores, have their own separate supervision and have minimal contact with store employees, the employees sought constitute an appropriate unit which may be severed from the existing overall unit in which they are included along with the Employer's store employees. The Employer opposes

severance on a number of grounds. The Acting Regional Director, in agreement with Petitioner, found that the warehousemen, drivers, and mechanics constitute a separate appropriate unit and he, accordingly, directed a severance election. The Employer argues on review that the bargaining history including these employees in the existing unit as well as the integrated nature of the Employer's business require that these employees remain a part of the historical bargaining unit. We find, in essential agreement with the Employer, that in all the circumstances of this case severance should be denied and the petition dismissed.

The Employer operates a chain of 22 retail food stores in Southeastern Massachusetts and Rhode Island; one warehouse located in Norton, Massachusetts, approximately 3 miles from its Norton store; and a garage for the maintenance of trucks which is located opposite the Norton store. The total employee complement is approximately 1,800. The Company's general offices are located on the second floor of the warehouse building. A kitchen operation to prepare and serve food to employees is also located on the first floor of the warehouse.

The Employer's management is centrally controlled and applies common employment procedures throughout its operations. All employees are governed by uniform labor relations policies and are subject to uniform work rules. Accounting and payroll functions are centralized and all employees are paid on an hourly basis. All employees likewise receive a wide range of uniform benefits from the Employer under the existing collective-bargaining agreement.

The requested unit embraces some 70 employees of whom approximately 37 are warehousemen, 20 are drivers, and 4 are truck mechanics. The employees in these three classifications are under the overall supervision of the warehouse superintendent, although the mechanics, all of whom are stationed at the garage, are under the immediate supervision of the head mechanic. Warehousemen, truckdrivers, and mechanics, however, have different working hours and schedules from those of the store employees and, also unlike the latter, are paid by check. Interchange between the requested employees and store personnel is sporadic, and separate seniority lists are maintained for the store employees, truckdrivers, and warehousemen. There is evidence, however, that a number of the employees who originally staffed the warehouse were drawn from store personnel who transferred to the warehouse at their own request.

¹ Southeast Independent Employees' Association was permitted to intervene on the basis of its contract with the Employer which embraces an

overall unit including the warehousemen, truckdrivers, and mechanics here involved as well as the store employees

The employees sought perform the duties suggested by their job classifications. Thus, the truckdrivers pick up merchandise from the warehouse for delivery to the Employer's stores or they may pick up merchandise from suppliers to be delivered directly to the stores or to be brought to the warehouse for storage there. Warehousemen help to load and unload truck trailers and to maintain warehouse stock. The mechanics do repair work on the truck tractors and trailers. It thus appears from the evidence that the ultimate function of all the employees sought is to insure proper distribution and delivery of the Employer's merchandise from its warehouse or suppliers to its retail stores.

The record clearly demonstrates that the drivers and truck mechanics² have been included in all bargaining agreements and have been represented by the Intervenor since 1962. It further shows that in September 1964 a memorandum from the president of the Company was distributed dealing with proposed rates at the warehouse and that, immediately upon completion of the warehouse in December 1964 (but prior to its full operational staffing the following month), the Intervenor and the Employer negotiated wage rates for the warehouse employees and added them to the unit. Thus, article 9 of the agreement dated December 21, 1964, lists starting wage rates and effective dates for all job classifications including truckdrivers, mechanics, and warehousemen. A supplemental agreement dated August 24, 1965, in article 1, provides for changes in the effective dates provided in article 9 of the 1964 agreement. Another supplemental agreement dated March 13, 1967, substitutes a new article 9 to supersede article 9 of the 1964 agreement and this new article lists amended wage rates together with periodic increases again for all job classifications, including truckdrivers, mechanics, and warehousemen.

Further, there is evidence that the requested employees have participated in the bargaining

procedures and have utilized the contract machinery to process grievances. The employees sought have a representative on the executive board of the Intervenor who sat in during the 1964 negotiations as well as during all subsequent negotiations. Representatives from various groupings of employees including the warehouse have been elected from their groups each year.³ Warehousemen and drivers have also elected their own steward, and the grievances of warehouse personnel have been processed as they have arisen.

We conclude that the foregoing circumstances, on balance, favor the continued appropriateness of the existing overall unit for purposes of collective bargaining and outweigh the possible appropriateness of a separate unit of warehousemen, truckdrivers, and mechanics. In reaching this conclusion we assume, without deciding, that the requested employees constitute an identifiable group which is similar to employee groups which the Board has heretofore found appropriate for severance from an overall unit. However, we believe that whatever separate community of interests these employees may enjoy has been, in effect, submerged into the broader community of interest which they share with other employees by reason of several years uninterrupted association in the existing overall unit and their participation in the representation of that unit for purposes of collective bargaining. In these circumstances, and in view of all the foregoing and the record as a whole, we are impelled to the conclusion that the unit sought by the Petitioner is inappropriate for severance purposes.⁴ We shall, therefore, dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

² While the term "truck mechanic" is not used in the collective-bargaining agreement, the record indicates that the parties have treated mechanics under the "maintenance man" classification.

³ However, none was elected during 1967 due to the pendency of the present proceeding.

⁴ See *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387, and *Allen Bradley Company*, 168 NLRB 15 *Wigwam Stores*, 166 NLRB 1034, and *John's Bargain Stores Corp.*, 160 NLRB 1519, which are relied upon by the Acting Regional Director, are inapposite. In *Wigwam*, unlike here, the warehouse had come into existence only 11 months before the petition was filed, and the bargaining history—which the Board found in-

sufficient to warrant denial of severance—did not include any period of negotiations during which the particular problems of a separate warehouse group might have been taken into consideration and resolved. In *John's Bargain Stores* (which issued, in any event, prior to the promulgation in *Mallinckrodt*, *supra*, of the Board's newly modified severance policy), the facts indicated that there, unlike here, the only bargaining history consisted of the first contract between the employer and the incumbent union which has been negotiated at a time when the employer's store and warehouse operations were considerably smaller in scope than they were at the time the petition was filed. Member Brown, who dissented from the *John's Bargain Store* decision, agrees that the holding of the cases relied on are inapplicable here.